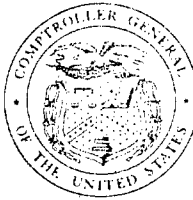


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Reimbursement of State Department Housing-Pool Costs]

FILE: B-196045

DATE: April 22, 1980

MATTER OF: State Department's Assessments of Housing-pool
Costs, Jakarta, Indonesia

DLB-04445

- DIGEST: 1. Department of State is authorized by 22 U.S.C. § 846 to administer housing pool on behalf of agencies which have leased or wish to lease housing to be used by employees of various agencies involved in pool and may pay rent on behalf of agencies involved directly from its own appropriations to be reimbursed by agency users on the basis of their share of total costs of State's operation of housing pool (including any operating, maintenance and utility costs paid by State).
2. While a particular agency's personnel might not occupy specific unit of housing leased by the agency and contributed to housing pool administered by Department of State under 22 U.S.C. § 846, agency's funds could be used to pay its share of the total costs attributable to its personnel's use of housing pool.

This advance decision is in response to a request from Mr. Thomas C. Roberts, Certifying Officer, Defense Intelligence Agency (DIA), asking whether a voucher in the amount of \$71,083, representing reimbursement to the Department of State for housing in Jakarta, Indonesia, for fiscal year 1978 may be certified for payment.

Mr. Roberts states in his request that:

"In Jakarta, Indonesia, there has been for many years a housing pool arrangement administered by the American Embassy for the benefit of the Embassy and certain other U.S. Government Agencies, including DIA, which have personnel at Jakarta. Under the housing pool arrangement, each agency is responsible for the funding of certain specific leases regardless of whether members of their own or another agency will occupy these

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leased units. Housing assignment is based on need, size of families, and availability at time of arrival of personnel on station. * * * The costs of all leases for housing units are paid with State Department funds. Each housing unit is identified as being contributed to the housing pool by a specific agency, and the costs of such housing units are billed to the agencies concerned by the State Department under the provisions of the Foreign Affairs Administrative Support (FAAS) agreements in effect with the agencies. It would be a coincidence if the sets of quarters identified as being the agency contribution to the housing were occupied by personnel assigned to such agency. For example, DIA provides ten housing units to the pool, which in total consists of some 145 units. The enclosed SF 1080, submitted for your review, reflects the State Department FAAS billing to DIA in the amount of \$71,083.00 for the cost of leasing 10 housing units in FY 1978 specifically identified as the DIA contribution to the housing pool. DIA personnel occupied only a few of these specific housing units, the remaining housing requirements of DIA being met by assignment of its personnel to other housing units in the pool."

Mr. Roberts is concerned that reimbursement to State under these circumstances might be in violation of 31 U.S.C. § 628, since DIA appropriations would be expanded to house non-DIA personnel. Consequently, he asks:

"a. Can the SF 1080 which requests reimbursement to the Department of State by DIA for the FY 1978 lease costs of housing units identified as the DIA contribution to the Jakarta housing pool, most of which were occupied by other than DIA personnel, be certified for payment?

"b. If the answer to the question posed in a. above is in the negative, can the reimbursements made to the Department of State for the same purpose for periods prior to FY 1978 be allowed to stand?

"c. If the answer to the question in a. above is positive, would the answer have been different if payments were to be made by DIA directly to the lessors, rather than as reimbursements to the Department of State for payments initially made to lessors by the Department of State?"

31 U.S.C. § 628 provides that:

"Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

Thus this provision precludes one agency of Government from expending funds to carry out the purposes and functions of another agency of Government unless otherwise authorized by law.

In response to our request to the Secretary of State for the authority to enter into the housing arrangement described above, the Deputy Director for Foreign Buildings, Department of State replied as follows:

* * * * *

"Authority for the concept of a housing pool administered by a central administrative office can be found in section 311 of the Foreign Service Act of 1946, 22 U.S.C. § 846, which authorizes officers and employees of the Foreign Service to perform duties and functions on behalf of any Government agency that requests them. The purpose of this authority is to permit technical and administrative personnel at posts abroad to perform functions on behalf of agencies having only a few persons assigned to a given post. Under section 311, for example, a General Services Officer (a Department of State employee) can act as a contracting officer on a requisition from the Agricultural Attache using Department of Agriculture funds and authorities.

* * * * *

"However, in answer to your second question it appears that authority to enter into agreements providing for reimbursements to be sought from agencies for housing exists only on the basis of actual use of the housing by employees of the agency. Accordingly we agree with the interpretation made by Mr. Roberts in his letter of September 7, 1979, that application of 31 U.S.C. § 628 requires that reimbursements must be made on actual cost or use basis.

"It is the position of the Department of State that the voucher covering 'assigned' leases is properly certifiable for payment if it represents actual rentals and associated costs, but further adjustments based on actual use are necessary to bring the housing pool arrangement into conformity with 31 U.S.C. § 628 (appropriated funds expendable only for objects for which appropriated) and 31 U.S.C. § 686 (interagency provision of goods and services).

"The JAO Jakarta will also be informed of the necessity for changing its arrangement so that reimbursements are sought only on the basis of occupancy."

22 U.S.C. § 846, provides that:

"The officers and employees of the [Foreign] Service shall, under such regulations as the President may prescribe, perform duties and functions in behalf of any Government agency or any other establishment of the Government requiring their services, including those in the legislative and judicial branches, but the absence of such regulations shall not preclude officers and employees of the Service from acting for and on behalf of any such Government agency or establishment whenever it shall, through the Department, request their services." Emphasis added.

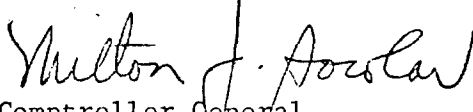
We were unable to locate any regulations issued to implement this section. However, even in the absence of such regulations, the Secretary of State is authorized to perform duties or functions on behalf of other Government agencies when an agency requests State to do so. The housing pool was established following an agreement set forth in the "Joint State/USIA/AID/Defense/Library of Congress Message" dated May 13, 1967, and falls within the authority granted to the State Department by 22 U.S.C. § 846.

Therefore, State may administer a housing pool on behalf of agencies which have leased or wish to lease, housing to be used by employees of the various agencies involved. Furthermore, we do not object to State's paying the rent on behalf of the agencies involved directly from its own appropriations, to be reimbursed by agency users on the basis of their share of the total costs of State's operation of the housing pool (including

any operating, maintenance and utility costs paid by State). In such a situation, while a particular agency's personnel might not occupy the specific unit of housing leased by the agency, its funds could be used to pay its share of the total costs attributable to its personnel's use of housing in the pool. We do not consider this to be a use of agency funds for a nonagency (or unauthorized) purpose in violation of 31 U.S.C. § 628.

This does not mean that DIA may be billed for a share of housing costs that bears no relation to its actual use of housing in the pool. If the voucher in question is not based on the costs of its occupancy of housing in the pool, DIA should request a new assessment from State for the FY 1978 leasing costs.

We note that State's Deputy Director for Foreign Buildings has stated that he will instruct the JAO in Jakarta to change the billing arrangements to conform to these principles so the problem should not arise in the future. We see no reason to disturb the payments made for prior fiscal years.


Acting Comptroller General
of the United States